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Attorneys for Defendant  
 KAM SHU LIM, TRUSTEE OF  
 THE HANG and KAM SHU LIM  
 1992 FAMILY TRUST

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAREN HEATHERLY and IRMA  
 RAMIREZ, each an individual,

Plaintiffs,

vs.

LA PALOMA RESTAURANT; HANG  
 LIM and KIM SHU LIM, TRUSTEES OF  
 THE HANG and KIM SHU LIM 1992  
 FAMILY TRUST,

Defendants.

Case No. 3:11-CV-00806-MEJ

**STIPULATION AND ~~PROPOSED~~  
 ORDER TO SET ASIDE CLERK'S  
 ENTRY OF DEFAULT AND DISMISSAL  
 OF DEFENDANT HANG LIM**

Complaint Filed: February 22, 2011  
 Trial Date: None

Plaintiffs DAREN HEATHERLY and IRMA RAMIREZ ("plaintiffs"), each an individual, and Defendant KAM SHU LIM, erroneously sued as KIM SHU LIM in her capacity as TRUSTEE OF THE HANG and KIM SHU LIM 1992 FAMILY TRUST ("defendant"), by and through their respective counsel of record, hereby request and make the following stipulation:

1. Whereas, plaintiffs filed the above-captioned action against the named defendants on February 22, 2011;

2. Whereas, plaintiffs having not received a responsive pleading from defendants Hang Lim and Kim Shu Lim after attempting to notify defendant that a responsive pleading was due;

1           3.       Whereas, plaintiffs filed a request for entry of default against defendants Hang  
2 Lim and Kim Shu Lim on July 13, 2011;

3           4.       Whereas, a Clerk of the Court entered default against defendants Hang Lim and  
4 Kim Shu Lim, Trustee of the Hang and Kim Shu Lim 1992 Family Trust on July 29, 2011;

5           5.       Whereas, counsel for defendant Kam Shu Lim advised plaintiffs' counsel on July  
6 29, 2011 that defendant had only recently retained him in this matter;

7           6.       Whereas, counsel for defendant Kam Shu Lim advised plaintiffs' counsel on July  
8 29, 2011 that he will file a responsive pleading to plaintiffs' complaint once the Court has set  
9 aside the default;

10          7.       Whereas, counsel for defendant Kam Shu Lim has advised plaintiffs' counsel that  
11 defendant Hang Lim is deceased and therefore not a proper party to this action;

12           **IT IS SO STIPULATED:**

13          1.       That the Court may set aside the Clerk's July 29, 2011 Entry of Default against  
14 defendants Hang Lim and Kim Shu Lim, Trustee of the Hang and Kim Shu Lim 1992 Family  
15 Trust;

16          2.       That pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), defendant Hang Lim is dismissed  
17 without prejudice from plaintiffs' action;

18          3.       That defendant Kam Shu Lim shall file a responsive pleading to plaintiffs'  
19 complaint on or before August 22, 2011;

20          4.       That the parties shall bear their own attorney fees and costs.

21  
22                               Respectfully submitted,

23       Dated: August 14, 2011

                              THOMAS E. FRANKOVICH,  
                              **A PROFESSIONAL LAW CORPORATION**

24  
25                               /s/ Thomas E. Frankovich  
26       By: \_\_\_\_\_  
                              Thomas E. Frankovich  
27                               Attorneys for Plaintiffs DAREN  
                              HEATHERLY and IRMA RAMIREZ, each  
28                               an individual

1 Dated: August 14, 2011

LIVINGSTON LAW FIRM

2 /s/ Jason G. Gong

3 By: \_\_\_\_\_

4 Jason G. Gong  
5 Attorneys for Defendant  
6 KAM SHU LIM, TRUSTEE OF  
7 THE HANG and KAM SHU LIM  
8 1992 FAMILY TRUST

9 **ORDER**

10 **IT IS HEREBY ORDERED** that pursuant to Fed. R. Civ. P. 55(c), and for good cause  
11 shown, the Clerk's July 29, 2011 Entry of Default against Defendants HANG LIM and KIM  
12 SHU LIM, TRUSTEES OF THE HANG and KIM SHU LIM 1992 FAMILY TRUST is hereby  
13 set aside.

14 **IT IS HEREBY FURTHER ORDERED** that defendant KAM SHU LIM, an individual  
15 sued herein as KIM SHU LIM, shall file a responsive pleading to plaintiffs' complaint on or  
16 before August 22, 2011.

17 **IT IS HEREBY FURTHER ORDERED** that defendant HANG LIM is dismissed  
18 without prejudice from plaintiffs' action.

19 **IT IS HEREBY FURTHER ORDERED** that the parties shall bear their own attorney  
20 fees and costs in connection to the preparation and filing of this stipulation.

21 DATED: August <sup>15</sup>\_\_\_\_\_, 2011

22   
23 \_\_\_\_\_  
24 Honorable Maria-Elena James  
25 UNITED STATES CHIEF MAGISTRATE  
26 JUDGE  
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